

**From:** alpha mortgage [alphamortgage@montana.net]

**Sent:** Friday, January 09, 2009 5:49 PM

**To:** 'sreichner@centurytel.net'

**Subject:** Senate Bill No. 122

VOTE NO ON SENATE BILL 122

**BUSINESS & LABOR**

EXHIBIT NO. 7  
DATE 2-06-09  
BILL NO. SB 122

Senate Bill 122 is not the federally mandated S.A.F.E. Act. The S.A.F.E Act maybe federally mandated but it in itself has problems. Senate Bill 122 is the S.A.F.E. Act with numerous bad ideas as requested by the Department of Administration. Our State Legislature needs to say no to these bad ideas no matter where they come from. The state legislature should modify the state law (32-9-101) we already have to comply with the S.A.F.E. Act.

### Section 3 Definitions

Page 6 Line 7 Section 3 (27) "Nontraditional mortgage product" "means any mortgage product other than a 30 year, fixed interest rate mortgage". Whoever wrote this, apparently has no knowledge of the industry it wishes to regulate. Have they never heard of a 20, 15 or 10 year fixed rate mortgages? There was a time in America that a 15 or 20 year fixed mortgage was a common item and they certainly are traditional mortgages. This definition has serious problems and is incorrect as written.

Page 6 Line 22 Section 3 (31) "Residential real estate" "means any real property located in Montana upon which there is an existing dwelling or upon which a dwelling is intended to be constructed". Intended to be constructed? When? How soon, next week, next month, next year, this decade? The definition is important and so is the language. A definition containing this language combined with Senate Bill 122, will damage the economy, restrict commerce and make it illegal for someone without a mortgage brokers license to sell or offer with financing one or more parcels/lots in or out of a subdivision, even if you are the owner of the property. Senate Bill 122 as drafted will cause the public to become unwitting participants in criminal behavior. I am certain that real estate developers and land owners could challenge this in a court and win.

### Section 4. License and registration required

Page 7 Line 10 Section 4 (2) "Unless specifically exempted under (Section 5) an entity may not engage in the business of mortgage lending or the business of a mortgage broker with respect to any residential real estate located in Montana without first obtaining and annually renewing a liense under (Section 1 through 46)". Residential real esate defined as above Page 6 Line 22 No. (31) would include lots, raw land. If you were selling any of your own property offering a mortgage, you would need to have a state license and register under the national S.A.F.E Act to sell your own assets. Whose idea is this?

### Section 5. Exemptions

There are only 3 exemptions in Senate Bill 122 and No. 3 is a colossal screw up.

Page 7 Line 29 Section 5 (3) "An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence". So, you can sell your home and offer a mortgage to the buyer, okay. However, if you own numerous rental properties or investment properties and decide to sell those properties and offer a mortgages to the buyers, you would need a state license, to register under the S.A.F.E. Act, take the continuing education classes, and pass the examination, on all federal and state requirement to make a mortgage loan, and post the surety bond. Not only would this affect those that might own rental properties, it would affect anybody who purchases for resale any vacant lots in any subdivision. Again, as drafted, I believe Senate Bill 122 would be challenged in a court of law and could turn innocent property owners into criminals. The public would also be subject to "The Commissioner" imposing civil penalties up to \$25,000 per infraction and incarceration. See Pages 32 & 33 of Senate Bill 122.

Please keep in mind that this law is being requested by the Department of Administration. If they are requesting this kind of law, how capable are they of making administration rules to go along with this law? Deny them their request. Senate Bill 122 is clearly not in the public's best interest. The state legislature should modify the state law (32-9-101) we already have to comply with the S.A.F.E. Act.

### Section 6 Proof of Exemption

Page 8 Line 7 Section 6, etc, etc, etc.

Page 11 Line 4 Section 12, etc., etc., etc.

"The commissioner shall adopt rules". The use of administrative rule to make law is regularly used by the bureaucracy of government. Given the quality of this draft, please do not include any administrative rule authority to the Department of Administration when it comes to regulating the mortgage industry.

### Section 14 Surety Bond

Page 12 Line 2 Section 14-(1) Surety Bond The Department of Administration might argue that the S.A.F.E. Act requires a surety bond. Just because the federal government says you have to do something does not necessarily make it sensible or right. Most of us learned from our Mother, you did not have to do foolish things simply because someone else is. Montana stood against the National I.D.!! There is nothing wrong with a surety bond but it is clearly the second best method for insuring payment, for damages. Currently, under Montana code (32-9-124), a license mortgage broker can provide an irrevocable letter of credit issued by a bank or a surety bond. There are 2 clear advantages to an irrevocable letter of credit: (1) Many of the letters of credit would be issued by a Montana bank who is going to pay off quicker, than most insurance companies. (2) Letters of credit may cost the entity less than a surety bond particularly if the party requesting the letter of credit is of strong financial character. All cost incurred by brokers or lenders, like any business, are eventually passed on to the public.

Page 12 Line 10 Section 14-(4) "The penal sum of a surety bond must be maintained in an amount that reflects the dollar amount of loans originated as determined by the commissioner". A surety bond "that reflects the dollar amount of loans originated", would be a cost that virtually no "mortgage brokers", or "mortgage lenders" could afford. Banks do not post a surety bond, but if they did they almost certainly could not post a bond equal to "the dollar amount of loans originated". The amount of a surety bond or irrevocable letter of credit should not be set by administrative rule, it needs to be spelled out in the law. The state legislature cannot trust the bureaucracy of the Department of Administration to make these decisions.

#### Section 15 Prelicensing Education

Page 12 Line 17 Section 15 (1) "Applicant shall complete at least 20 hours of pre-licensing education". The S.A.F.E. Act is a duplication of what has been required by the current state law since September of 2004. Under the current state law a broker is taking 12 hours annually for continuing education. The S.A.F.E. Act requires 20 hours of prelicensing and only 8 hours of annual continuing education. Brokers have been taking 4 more hours of education under the state law than the federal government deemed necessary (8 hours) annually (8 years x 4 extra hours per year = 32 hours). So, most brokers have already taken more hours than required for the prelicensing educational requirement and would continue to take 4 more hours than the federal requirement of 8 if we modified the existing state law rather than throw out the brokers law we already have that was passed effective September 2004. Almost all of the requirements of the S.A.F.E. Act were met in that law. We do not need a new law. The state legislature should modify the state law (32-9-101) we already have to comply with the S.A.F.E. Act.

Page 17 Line 27 Section 21 (c) "Advertise mortgage loans.....given to a reasonable number of qualified applicants;" What constitutes a reasonable number? And who is going to decide what a reasonable number is? The demographics of one Montana community or another, the media you advertise in, (newspaper, tv or radio) will change how many potential qualified applicants exist in any given group of applications. State consumer protection laws and existing federal prohibitions on deceptive advertising provide ample recourse. Section 21-(c) is poorly worded at best, confusing and unnecessary.

Page 20 Line 1 Section 27 (1) Mortgage call report The S.A.F.E. Act states: "mortgage licensees shall submit to the national mortgage licensing system and registry". No where in the S.A.F.E. Act does it require this report be sent to state government. Why then is this required in Senate Bill 122? Is this to justify the growth of state government? How does this reduce the cost for borrowers and taxpayers?

Page 20 Line 16 Section 29 (2) "Any contract under this section entered into by a mortgage loan originator is binding on the mortgage lender or mortgage broker that employs or contracts with the mortgage loan originator." This will require a new state disclosure when we already have a "Mortgage Loan Origination Disclosure" under State Law 32-9-101.

Page 21 Line 14 Section 30 (6) "Accounting for escrow funds and trust funds must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500, and 71-1-115". This is not part of the S.A.F.E. Act. Why is it part of Senate Bill 122? Many Title Companies conducting business in the State of Montana provide long term escrow services. Are borrowers better off with an out of state escrow service? Do the jobs in these Montana based escrow companies not mean anything to the sponsor of this bill?

Page 21 Line 21 Section 30 (8) "A mortgage loan originator may not accept or receive any escrow funds or trust funds from a borrower". This is simply unworkable. Trust accounts funds are required by most lenders for the long term escrows of taxes and insurance. Short term trust accounts are required so that borrowers can pay for third party services such as credit reports, and appraisals. The state legislature should modify the state law (32-9-101) we already have to comply with the S.A.F.E. Act.

Page 25 Line 16 Section 35 (27) "Obtain an agreement or instrument in which blanks are left to be filled in after execution." When a loan is paid off, borrowers need to have their mortgage released. The form is typically a request for reconveyance. Lenders never know when a loan will be paid off, therefore, it is impossible to fill in the date on the reconveyance in advance. Many lenders do not provide a reconveyance when the loan is originated. We always get a signed reconveyance stating it is only to be recorded and dated when the loan is paid off. We place that request for reconveyance in a Montana escrow, in case the lender is incapacitated, dead or out of business. Some borrowers have had to go through hell just to get the reconveyance because no one cared to have the document ready at the time the loan originated. It is so much better to have the request for reconveyance made out in advance but not dated or marked paid in full. This is another example of the Department of Administration proposing an idea that harms borrowers and restricts

lenders capacity to serve the public.

Page 25 Line 17 Section 35 (28) Obtain an exclusive dealing or exclusive agency agreement from a borrower." This is not part of the S.A.F.E. Act as are many of the items in Senate Bill 122. Exclusive dealing or exclusive agency agreements are not something I use with residential loans. However, a restriction on them is a poor idea. Borrowers who have particular problems can benefit from these agreements if their situation is either extremely complicated or will require months to complete their loan needs. (We once helped a federal bank examiner, working 6 months to remove and/or correct her credit report which showed over \$600,000 of federal tax liens. Some of the information in her credit report was accurate and some was not.) Why would someone work for 6 months with no contract for compensation? Third party providers, contract for services.

There are many other problems with Senate Bill No.122 and they are so numerous I can only say this bill does not deserve to be considered for approval. The existing mortgage broker law 32-9-101 which was passed for licensing in 2004 is a far superior regulatory document. It could be modified with input from mortgage brokers, lenders and borrowers. The Department of Administration should not have proposed this bill without the public or mortgage industries input. The state legislature should modify the state law (32-9-101) we already have to comply with the S.A.F.E. Act.

VOTE NO ON SENATE BILL 122

Sincerely,  
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